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United States Secretary of Labor*

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MARTIN J. WALSH,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

Case No. 2:21-cv-00635-RSM

**ORDER GRANTING
SECRETARY'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS**

GUTTERS PERFECT INC., dba LEAF
FILTER, a Washington corporation, and
GUTTERS PERFECT, INC. 401(K)
PROFIT SHARING PLAN, a Safe Harbor
Defined Contribution Plan

Defendants.

The United States Secretary of Labor (the "Secretary") brought this action requesting that the Court appoint an independent fiduciary to act as a fiduciary for Gutters Perfect, Inc. 401(k) Profit Sharing Plan ("Plan") pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1191c, and to obtain other equitable relief to redress violations and enforce the provisions of ERISA

pursuant to Section 502(a)(2) and (5), 29 U.S.C. § 1132(a)(2) and (5). The Secretary now brings a motion for entry of a default judgment against Defendants Gutters Perfect Inc., (“Gutters Perfect”) and the Plan (together “Defendants”) under Rule 55(b)(2) of the Federal Rules of Civil Procedure, seeking a judgment appointing an independent fiduciary to perform various duties, including distribution of Plan participant’s retirement savings from the Plan.

Following entry of default, courts are authorized to grant default judgment under Federal Rule of Civil Procedure 55. In exercising its discretion, the factors the court may consider include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong public policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In considering these factors, all factual allegations in the plaintiff’s complaint are taken as true, except for those relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–918 (9th Cir. 1987). After having considered the documents filed in support of the motion, the Complaint, the file in this action, and all other matters presented to the Court, including the discussion of the factors set forth in *Eitel*, 782 F.2d at 1471–72, the Court finds as follows:

1. Gutters Perfect was dissolved by the State of Washington in March 2013.
2. Jack Mitchell Reed, the Plan’s sole trustee, is deceased, and as such is not available to perform his duties as trustee such as authorizing the Plan’s asset custodian, Charles Schwab and Co., Inc., to distribute plan assets to Plan participants and beneficiaries.

3. Default was entered by the Clerk of the Court against Defendants on September 13, 2021.
4. Defendants did not appear or otherwise defend in this action after the Secretary served the Washington Secretary of State a copy of the summons and complaint in this action in compliance with Federal Rules of Civil Procedure 4(e)(1) and 4(h)(1)(A), and Revised Code of Washington 23.95.450(4).
5. Absent entry of default judgment against Defendants and appointment of an independent fiduciary, the Secretary and Plan participants and beneficiaries would be prejudiced because the Plan's asset custodian has custody of the Plan assets (Plan participants' retirement savings) and refuses to distribute the Plan assets without authorization of the Plan's sole trustee, who is deceased.
6. The Secretary has alleged sufficient facts in his complaint, which the Court must accept as true for purposes of establishing liability, to show that Gutters Perfect violated ERISA. In particular, Gutters Perfect failed to determine and pay benefits under the Plan, resulting in participants' and beneficiaries' inability to access plan assets and Gutters Perfect failed to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims as required by 29 U.S.C. § 1104(a)(1)(B).
7. The Secretary does not seek a money judgment against Defendants.
8. There is no possibility of a dispute regarding the material facts alleged by the Secretary. Governmental websites corroborate some of the Secretary's allegations such as Gutters Perfect's status as a dissolved entity and the death of sole trustee Jack Mitchell Reed in October 2019.

1 9. Default was not due to excusable neglect. The Secretary properly served
2 Defendants by way of the Washington Secretary of State and did not receive
3 any Response from Defendants. Publicly available documents show that the
4 company is no longer in operation, which supports a finding that default was
5 not the result of excusable neglect.

6 10. While public policy generally favors resolution of complaints on the merits,
7 this policy is not absolute and must be weighed against other equities such as
8 prejudice to the plaintiff.
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10 THEREFORE, IT IS ADJUDGED AND ORDERED that:
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- 12 1. Defendants violated 29 U.S.C. §§ 1104(a)(1)(A), 1104(a)(1)(B) and 1105(a)(1)-(3)
13 of Title I of ERISA, 29 U.S.C. §§ 1001-1191c.
- 14 2. AMI Benefit Plan Administrators, Inc. is hereby appointed as independent
15 fiduciary with discretionary authority over the administration and management of
16 the Plan, with all the rights, duties, discretion, and responsibilities of a trustee,
17 fiduciary, and Plan Administrator under ERISA to perform the following duties:
- 18 a. The independent fiduciary shall be responsible for marshaling, calculating
19 the account balances, allocating, paying out, distributing, and administering
20 Plan assets for all the assets in the Plan, and taking further action with
21 respect to the Plan as appropriate, and terminating the Plan when all of its
22 assets are distributed to all of the eligible Plan participants and
23 beneficiaries;
- 24 b. The independent fiduciary shall, pursuant to the procedures outlined in the
25 Employee Benefits Security Administration's ("EBSA") Field Assistance
26 Bulletin No. 2014-01, exercise reasonable care and diligence to identify and
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1 locate each participant and beneficiary of the Plan who is eligible to receive
2 a distribution under the terms of the Plan;

- 3 c. The independent fiduciary shall have full access to all data, information,
4 and calculations in the possession of the Plan and under its control,
5 including information and records maintained by the Defendants, their
6 attorneys, their accountants, and other agents, as well as service providers
7 of the Plan;
- 8 d. The independent fiduciary shall comply with all applicable rules and laws;
- 9 e. The independent fiduciary has all the rights, duties, discretion and
10 responsibilities of a trustee, fiduciary and Plan Administrator under ERISA,
11 including filing annual and/or final Form 5500;
- 12 f. For services performed pursuant to this judgment, the independent fiduciary
13 shall receive compensation not to exceed \$3,810.00 for fees and expenses
14 reasonably and necessarily incurred in administrating and terminating the
15 Plan; and
- 16 g. The independent fiduciary's fees and expenses shall be paid from the assets
17 of the Plan, or alternatively by the Secretary out of EBSA's Abandoned
18 Plan Fund, which was established to defray the expenses of the
19 administration and termination of low asset abandoned plans.
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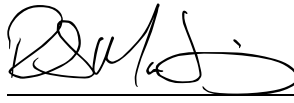
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3. This Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Order and Judgment.

DATED this 12th day of January, 2022.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

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